IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Crim.Writ Petition No. 131 of 2006

Shri Vinaykumar Parmanand Mishra ..Petitioner

vs.

1. The State of Maharashtra
and others ..Respondents

Mrs.S.Y.Mohite for petitioner
Mr.S.S.Pednekar, A.P.P. for respondents.

CORAM: S.C.DHARMADHIKARI J.
16th June, 2007

P.C.

1. The order of externment passed against the petitioner and confirmed in appeal by the Appellate Authority is under challenge in this petition.

2. The show cause notice was issued on 11th March,2005 and received by the petitioner calling upon him to show cause as to why he should not be externed from Thane District, Mumbai city, Mumbai Suburban Limits, Navi Mumbai, Raigad and Nasik districts for two years.

3. The allegations in the show cause notice pertain to some cases filed against the petitioner from November, 1998. However, the show cause notice states that the petitioner resides at Shivaji Nagar, Kamatghar, Bhiwandi and cases against him are registered within the limits of Bhiwandi Shahar Police Station. The first case is

registered in 1998 and 2nd, 3rd and 4th cases are registered in 2004 at the same police station. It is stated that incamera statements recorded would demonstrate that the activities of the petitioner are such as would amount to creating terror in the mind of the people/residents. It is alleged that the people are not coming forward to complain or depose out of fear and threat to their lives and properties. It is on the basis of the cases registered and 3 incamera statements that the petitioner was sought to be externed.

4. The petitioner replied to the show cause notice and dissatisfied with the explanation, the Externment Authority passed the order of externment against the petitioner on 20th September, 2005. The petitioner was externed for two years from Thane District, Mumbai City, Mumbai Suburban Limits and Nashik District.

5. The order of externment was challenged in appeal but the appellate authority cocurred with the view of the externing authority and dismissed the petitioner’s appeal.

6. Aggrieved and dissatisfied with the above order that the present petition has been filed.

7. Ms.Mohite appearing for the petitioner submits that the impugned order is vitiated on four counts. She

submits that the show cause notice is vague. Further, before passing the externment order, no personal hearing was given to the petitioner. Thirdly, the externing authority has not considered the relevant material in as much as out of the four cases referred to and relied upon the petitioner has been acquitted in one case. The fourth ground which vitiates the order is that the same is excessive in as much as the activities of the petitioner are confined to Bhiwandi city limits. There is no reason for externing the petitioner from Thane District, Mumbai City, Mumbai Suburban Limits and Nashik District as these areas have absolutely no nexus with the alleged illegal and criminal activities of the petitioner.

8. Mr.Pednekar, A.P.P. submits that the petitioner has been indulging in the activities for considerable period of time and it is not as if the externment order is passed as a matter of course. The petitioner was permitted to appear and satisfy the authority by producing all the material in favour of his case set out in the reply, However, despite opportunities, the petitioner did not produce and chose to submit his reply/written statement through his Advocate.

9. In such circumstances, according to Shri Pednekar, there is no substance in the complaint and the order is exparte. In sofar as the activities of the petitioner are

concerned, there is clear nexus established and, therefore, it cannot be said that the order is excessive as well. For all these reasons he submits that the petition be dismissed.

10. With the assistance of the petitioner's Advocate so also that of the learned A.P.P. I have perused the show cause notice. The show cause notice does not state as to why the petitioner is sought to be externed from the entire Thane District, Mumbai City, Mumbai Suburban limits, Raigad and Nashik districts so also Navi Mumbai area for two years. If the activities of the petitioner are confined to Bhiwandi and nearby areas (city limits and vicinity) as to why the petitioner is sought to be externed from entire Thane district and Mumbai city, Mumbai Suburban limits so also from Nashik district has not been explained at all. The impugned order is, therefore, clearly excessive. The entire order is silent with regard to the area of operation of the petitioner and the nexus therewith to the above mentioned districts. It is not a coincidence that the order sets out the said five areas and thereafter finally the Externing Authority restricts itself to Thane District, Mumbai city, Mumbai Suburban limits and Nashik district. Navi Mumbai is not a district but that invariably escapes the attention of the externing authority and in all show cause notices Navi Mumbai is mentioned as a district.

11. Similarly the petitioner's activities being confined to Bhiwandi there is no occasion as to why the petitioner needs to be externed from Thane District, Mumbai City, Mumbai Suburban limits and Nashik District. It is well settled that a nexus has to be prima facie established by the Externing Authority and thereafter permitted to be controverted by the externee. There is no such satisfaction arrived at nor is any material referred in that behalf in the impugned order. For these reasons, the impugned order deserves to be quashed and set aside on this ground alone.

12. Further, it appears to me that the externing authority has passed the order in absence of the petitioner. The petitioner's Advocate has referred to the show cause notice, copy of which is at Annexure A. The same is dated 11th March, 2005. The petitioner was directed to appear in pursuance thereof on 22nd March, 2005. It is the case of the petitioner and which is made good in the reply to the show cause notice, copy of which is at annexure B with the petition, that the petitioner appeared on 22nd March, 2005 and prayed for time to file the reply. The petitioner had made this request personally on 22nd March, 2005. Further, the petitioner was present on that date along with five witnesses and their statements were recorded. In such circumstances, as

to on what basis, a finding is recorded that the petitioner has avoided or has failed to remain present before the externing authority is not clear to me at all. The impugned order of externment which is passed in absence of the petitioner is confirmed in appeal by relying upon some communications and the fact that on 21st July, 2005 and 6th August, 2005 the petitioner was given opportunity but he forwarded his written arguments through the Advocate and thus did not avail of the same. There is no material produced in as much as once the petitioner has appeared and have recorded the same through the Advocate's letter I have no reason to disbelieve the version of the petitioner. Thus, I find that the externing authority was in patent error in proceeding in absence of the petitioner. The petitioner could not have been externed unless the principles of natural justice were complied with in letter and spirit. This is a serious matter and the petitioner will have to be given full opportunity before the order of externment was passed. In the facts and circumstances of the present case, the impugned order is vitiated and deserves to be set aside on this ground as well. Once the conclusion is reached it is not necessary to consider the other arguments of Ms.Mohite with regard to the show cause notice being vague and the externing authority having failed to consider the relevant material. Once I am satisfied that the order is excessive and vitiated for breach of principles of natural justice as

well, the petition deserves to be succeed. Rule is made absolute in terms of prayer clauses (a) and (b).

(S.C.DHARMADHIKARI J.)